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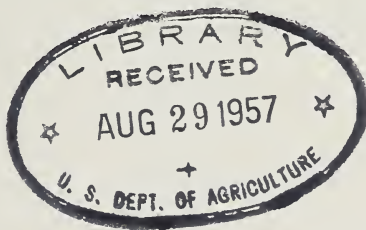
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# **RULES AND REGULATIONS**

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***Under the Agricultural Marketing  
Agreement Act of 1937  
Code of Federal Regulations  
Title 7 Part 900 Rev. 1955***



Issued May 1957

U. S. DEPARTMENT OF AGRICULTURE  
✓ AGRICULTURAL MARKETING SERVICE



## SUBCHAPTER A—MARKETING ORDERS

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#### SUBPART—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS TO FORMULATE MARKETING AGREEMENTS AND MARKETING ORDERS

AUTHORITY: §§ 900.1 to 900.18 issued under sec. 10, 48 Stat. 37, as amended; 7 U. S. C. 610.

SOURCE: §§ 900.1 to 900.18 appear at 13 F. R. 8585, Dec. 29, 1948; 19 F. R. 57, Jan. 6, 1954.

§ 900.1 *Words in the singular form.* Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.2 *Definitions.* As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) The term "Department" means the United States Department of Agriculture.



(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The term "examiner" means any examiner in the Office of Hearing Examiners, United States Department of Agriculture.

(e) The term "Deputy Administrator" means any Deputy Administrator of the Agricultural Marketing Service of the Department or any officer or employee of the Department to whom such Deputy Administrator has heretofore lawfully delegated, or to whom he may hereafter lawfully delegate, the authority to act in his stead.

(f) The term "Service" means the Agricultural Marketing Service of the Department.

(g) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(h) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(i) The term "marketing agreement" means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the act.

(j) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the act, and after notice and hearing as required by said section.

(k) The term "proceeding" means a proceeding upon the basis of which a marketing agreement may be entered into or a marketing order may be issued.

(l) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D. C.

(m) The term "presiding officer" means the examiner conducting a proceeding under the act.

§ 900.3 *Proposals.* (a) A marketing agreement or a marketing order may be proposed by the Secretary or by any other person. If any person other than the Secretary proposes a marketing agreement or marketing order, he shall file with the Deputy Administrator a written application, together with at

least four copies of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Deputy Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Deputy Administrator to conclude that the proposed marketing agreement or marketing order will not tend to effectuate the declared policy of the act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Deputy Administrator to conclude that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the act, or if the Secretary desires to propose a marketing agreement or marketing order, he shall sign and cause to be served a notice of hearing, as provided in this subpart.

§ 900.4 *Institution of proceeding —*

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the marketing agreement or marketing order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed marketing agreement or marketing order or a description of the subjects and issues involved and shall state the industry, area, and class of persons to be regulated, the time and place of such hearing, and the place where copies of such proposed marketing agreement or marketing order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided in this subpart, unless the Deputy Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Deputy Administrator may determine to be reasonable in the circumstances: *Provided*, That, in the case of hearings on amendments to marketing agreements or marketing orders, the time of the hearing



may be less than 15 days but shall not be less than 3 days after the date of publication of the notice in the **FEDERAL REGISTER**.

(b) *Giving notice of hearing.* (1) Upon the filing of the notice of the hearing, the hearing clerk shall give or cause to be given notice of the hearing in the following manner:

(i) By publication of the notice of hearing in the **FEDERAL REGISTER**;

(ii) By mailing a true copy of the notice of hearing to each of the persons known to the Deputy Administrator, to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as reasonably will tend to bring the notice to the attention of the persons interested therein;

(iv) By forwarding copies of the notice of hearing addressed to the governors of such of the several States of the United States and to executive heads of such of the Territories and possessions of the United States as the Deputy Administrator, having due regard for the subject matter of the proposal and the public interest, shall determine should be notified.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by subparagraph (1) (i) of this paragraph; and failure to give notice in the manner provided in subparagraph (1) (ii), (iii), and (iv) of this paragraph shall not affect the legality of the notice.

(c) *Proof of the giving of notice.* Proof of the giving of notice (other than by publication in the **FEDERAL REGISTER**) shall be by the affidavit or certificate of the person giving the same. Such affidavit or certificate shall be filed with the hearing clerk and the filing thereof shall be noted on the docket of the proceeding.

§ 900.5 *Docket number.* Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.6 *Presiding officers—(a) Assignment.* No presiding officer who has any pecuniary interest in the outcome of a proceeding shall serve as presiding officer in such proceeding.

(b) *Powers of presiding officers.* Subject to review by the Secretary, as provided elsewhere in this subpart, the presiding officer, in any proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearing, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law;

(7) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(c) *Who may act in absence of presiding officer.* In case of the absence of the presiding officer or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other presiding officer.

(d) *Disqualification of presiding officer.* The presiding officer may at any time withdraw as presiding officer in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.7 *Motions and requests—(a) General.* All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the presiding officer or may be stated orally and made a part of the transcript.

Except as provided in § 900.15 (b) such motions and requests shall be addressed to, and ruled on by, the presiding officer if made prior to his certification of the transcript pursuant to § 900.10 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The presiding officer may in his discretion submit or certify to the Secretary for

decision any motion, request, objection, or other question addressed to the presiding officer.

§ 900.8 *Conduct of the hearing*—(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer shall have changed the time or place, in which event the presiding officer shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 900.4 (relating to the giving of notice of the hearing): *Provided*, That, if the change in time or place of hearing is made less than 5 days prior to the date previously fixed for the hearing, the presiding officer, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances* — (1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the presiding officer may require.

(2) *Debarment of counsel or representative.* Whenever, while a proceeding is pending before him, the presiding officer finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the presiding officer may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the

proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided*, That the presiding officer may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or other representative.

In case the presiding officer has ordered that a person be precluded from further acting as counsel or representative in the proceeding, the presiding officer, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order, respecting the appearance of such person as counsel or representative in proceedings before the Secretary, as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* The presiding officer shall have noted on the record his designation as presiding officer and the notice of the hearing as filed with the Division of the Federal Register. This shall be done by filing as an exhibit for the record a copy of the FEDERAL REGISTER containing such designation and such notice, or a duly certified copy of such designation and notice.

Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the presiding officer shall announce.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

When necessary, in order to prevent undue prolongation of the hearing, the presiding officer may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

The presiding officer shall, insofar as practicable, exclude evidence which is



immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript.

Only objections made before the presiding officer may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the presiding officer, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the presiding officer shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the presiding officer. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing) the presiding officer, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and

material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the presiding officer.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided*, That interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the presiding officer's ruling in excluding the evidence was erroneous. The presiding officer shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the presiding officer erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

#### § 900.9 *Oral and written arguments—*

(a) *Oral argument before presiding officer.* Oral argument before the presiding officer shall be in the discretion of the presiding officer. Such argument, when permitted, may be limited by the presiding officer to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings and conclusions.* The presiding officer shall announce at the hearing a reasonable period of time within which interested per-

sons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the marketing agreement or marketing order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the presiding officer, as provided in § 900.8 (d), he shall include in the brief a concise statement concerning each such objection, referring where practicable, to the pertinent pages of the transcript.

§ 900.10 *Certification of the transcript.* The presiding officer shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the presiding officer shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon each copy of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the presiding officer.

§ 900.11 *Copies of the transcript.* A copy of the transcript shall be kept on file in the office of the hearing clerk, where it shall be available for examina-

tion during official hours of business, but such copy shall remain the property of the Department and may not be removed from said office.

If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter, and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.

§ 900.12 *Assistant Administrator's recommended decision—(a) Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Deputy Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Deputy Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) A ruling upon each proposed finding or conclusion submitted by interested persons, and (3) An appropriate proposed marketing agreement or marketing order effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision the Deputy Administrator shall give notice thereof, and opportunity to file exceptions thereto, to all interested persons in the same manner as provided in § 900.4 (relating to the giving of notice of the hearing). Within a period of time specified in such notice (to be fixed by the Deputy Administrator, but not to exceed 20 days) after the filing of the recommended decision with the hearing clerk, any interested person may then file with the hearing clerk exceptions to the Deputy Administrator's proposed marketing agreement or marketing order, or both, as the case may be, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed marketing agreement or marketing order.

(d) *Omission of recommended decision.* The procedure provided in this



section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 900.13 *Submission to Secretary.* Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: all motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Deputy Administrator's recommended decision, if any, and such exceptions as may have been filed.

§ 900.13a *Decision by Secretary.* After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include (a) a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons and (d) either (1) a denial of the proposal to issue a marketing agreement or marketing order or (2) a marketing agreement and, if the findings upon the record so warrant, a marketing order, the provisions of which shall be set forth directly or by reference, regulating the handling of the commodity or product in the same manner and to the same extent as such marketing agreement, which order shall be complete except for its effective date and any determinations to be made under § 900.14 (b) or § 900.14 (c): *Provided*, That such marketing order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 900.14 (b) or § 900.14 (c) have been met.

§ 900.14 *Execution of marketing agreement and issuance of marketing order*—(a) *Execution of marketing agreement.* If the Secretary has approved a marketing agreement, as provided in § 900.13a, the Deputy Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If

and when such number of the handlers as the Secretary shall deem to be sufficient shall have executed the marketing agreement, the Secretary shall execute the same, and notice of its effective date shall be mailed by the hearing clerk to each person signatory thereto. A marketing agreement shall be effective and binding upon any party thereto even though such party may not have received the notice provided for in this paragraph, or the hearing clerk may have failed to mail such notice.

(b) *Issuance of marketing order with marketing agreement.* Whenever, as provided in paragraph (a) of this section, the Secretary executes a marketing agreement, and handlers also have executed the same as provided in section 8c (8) of the act, he shall, if he finds that it will tend to effectuate the purposes of the act, issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a: *Provided*, That the issuance of such order shall have been approved or favored by producers as required by section 8c (8) of the act.

(c) *Issuance of marketing order without marketing agreement.* If, despite the failure or refusal of handlers to sign the marketing agreement, as provided in section 8c (8) of the act, the Secretary makes the determinations required under section 8c (9) of the act, the Secretary shall issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a.

(d) *Effective date of marketing order.* No marketing order shall become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date therefor: *Provided*, That no marketing order shall become effective as to any person sought to be charged thereunder before either (1) it has been filed with the Division of the Federal Register, or (2) such person has received actual notice of the issuance and terms of the marketing order.

(e) *Notice of issuance.* After issuance of a marketing order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given in the same manner as hereinbefore provided in § 900.4 (relating to the giving of notice of hearing).



§ 900.15 *Filing; extensions of time; effective date of filing; and computation of time*—(a) *Filing, number of copies.* Except as is provided otherwise in this subpart, all documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk shall be filed in quadruplicate. Any document or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the presiding officer.

(b) *Extensions of time.* The time for the filing of any document or paper required or authorized by the foregoing provisions of this subpart to be filed may be extended by the presiding officer (before the record is certified by the presiding officer) or by the Deputy Administrator (after the record is so certified by the presiding officer but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the presiding officer, Deputy Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions of this subpart to be filed shall be deemed to be filed when it is postmarked or when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

§ 900.16 *Discussion of issues, etc., of proceeding prohibited.* Except as may be provided otherwise in this subpart, no officer or employee of the Department shall, following the close of the hearing in a marketing agreement or marketing order proceeding and prior to the execution of a marketing agreement or the issuance of a marketing order therein, discuss the issues, merits, or evidence involved in the proceeding with any person interested in the result of the proceeding or with any representative of such person: *Provided, however*, That the provisions of this section shall not preclude an officer or employee who has

been duly assigned to, or who has supervision over, a proceeding from discussing with interested persons or their representatives matters of procedure in connection with such proceeding. Insofar as the provisions of this section are inconsistent with the provisions of Regulation 1544 of the publication entitled "Regulations of the U. S. Department of Agriculture," the provisions of this section shall prevail.

§ 900.17 *Additional documents to be filed with hearing clerk.* In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any marketing agreement or marketing order and which the Secretary is required to issue or to approve.

§ 900.18 *Hearing before Secretary.* The Secretary may act in the place and stead of a presiding officer in any proceeding under this subpart. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided*, That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

#### SUBPART—RULES OF PRACTICE GOVERNING PROCEEDINGS ON PETITIONS TO MODIFY OR TO BE EXEMPTED FROM MARKETING ORDERS

**AUTHORITY:** §§ 900.50 to 900.71 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

**SOURCE:** §§ 900.50 to 900.71 appear at 13 F. R. 5859, Dec. 29, 1948; 19 F. R. 57, Jan. 6, 1954.

§ 900.50 *Words in the singular form.* Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.51 *Definitions.* As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "act" means Public Act No. 10, 73d Congress, as amended and

as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. and Sup. 601);

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore lawfully delegated, or to whom the Secretary may hereafter lawfully delegate, the authority to act in his stead;

(d) The term "examiner" means any examiner in the Office of Hearing Examiners, United States Department of Agriculture;

(e) The term "Deputy Administrator" means any Deputy Administrator of the Agricultural Marketing Service of the Department or any officer or employee of the Department to whom such Deputy Administrator has heretofore lawfully delegated, or to whom he may hereafter lawfully delegate, the authority to act in his stead;

(f) The term "Service" means the Agricultural Marketing Service of the Department;

(g) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(h) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the act;

(i) The term "handler" means any person who, by the terms of a marketing order, is subject thereto, or to whom a marketing order is sought to be made applicable;

(j) The term "proceeding" means a proceeding before the Secretary arising under subsection (15) (A) of section 8c of the act;

(k) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(l) The term "party" includes the Department;

(m) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D. C.;

(n) The term "presiding officer" means the examiner conducting a proceeding under the act;

(o) The term "presiding officer's report" means the presiding officer's report to the Secretary and includes the presiding officer's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (2) order and (3) rulings on findings, conclusions and orders submitted by the parties;

(p) The term "petition" includes an amended petition.

§ 900.52 *Institution of proceeding—*

(a) *Filing and service of petition.* Any handler desiring to complain that any marketing order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Deputy Administrator and the Solicitor, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or applica-



tion thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *Application to dismiss petition—*  
(1) *Filing, contents, and responses thereto.* If the Deputy Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, or is not filed in good faith, or is filed for purposes of delay, he may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the application to the Secretary for his consideration.

(2) *Decision by Secretary.* The Secretary, after due consideration, shall render a decision upon the application, stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the hearing clerk who shall cause a copy thereof to be

served upon the petitioner and a copy thereof to be transmitted to the Deputy Administrator. Any such order of the Secretary shall be a final order: *Provided*, That within 20 days following the service upon the petitioner of a copy of an order of the Secretary dismissing the petition, or any portion thereof, on the ground that it does not substantially comply in form and content with the act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

(3) *Referral to presiding officer.* The Secretary may, in his discretion, refer any application made under this section to the presiding officer for preliminary consideration and report, and, in a proper case, for the taking of evidence: *Provided*, That the provisions of §§ 900.60 to 900.65, inclusive, shall be applicable to the reception of such evidence, if any; the form, content, and filing of such report; the allowance of exceptions thereto; and transmittal of the record to the Secretary.

(4) *Oral argument.* Unless a written application for oral argument is filed by a party with the hearing clerk not later than the time fixed for filing papers in opposition to the application, it shall be considered that the party does not desire oral argument. The granting of a request to make oral argument shall rest in the discretion of the Secretary or the presiding officer, as the case may be.

§ 900.52a *Answer to petition—* (a) *Time of filing.* Within 30 days after the filing of the petition, the Deputy Administrator shall file an answer thereto: *Provided*, That if an application to dismiss the petition, in whole or in part, is made pursuant to § 900.52 (c), the answer shall be filed within 15 days after the filing of an order of the Secretary denying the application or granting the application with respect to only a portion of the petition. The answer shall be filed with the hearing clerk who shall cause a copy thereof to be served promptly upon the petitioner.

(b) *Contents.* The answer shall specify which of the material allegations of fact or of law in the petition are controverted and which are not controverted. The answer also may contain affirmative allegations of fact constituting separate defenses and statements of objections to the sufficiency of the whole or any part of the petition.

§ 900.52b *Amended pleadings.* At any time before the close of the hearing the petition or answer may be amended, but the hearing shall, at the request of the adverse party, be adjourned or recessed for such reasonable time as the presiding officer may determine to be necessary to protect the interests of the parties. Amendments subsequent to the first amendment or subsequent to the filing of an answer may be made only with leave of the presiding officer or with the written consent of the adverse party.

§ 900.53 *Withdrawal of petition.* If, at any time after the petition is filed, the petitioner desires to withdraw the same, he shall file with the hearing clerk (or, if filed during the course of a hearing, with the presiding officer) a written request for permission to withdraw. The Secretary may, in his discretion, thereupon dismiss the petition without further procedure: *Provided*, That, if the request to withdraw is filed after a hearing has been opened, permission to withdraw shall be granted only in exceptional circumstances.

§ 900.54 *Docket number.* Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.55 *Presiding officers*—(a) *Assignment.* No presiding officer who has any pecuniary interest in the outcome of the proceeding, or who has participated in any investigation preceding the institution of the proceeding, shall serve as presiding officer in such proceeding.

(b) *Conduct.* The presiding officer shall conduct the proceeding in a fair and impartial manner and shall not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(c) *Powers of presiding officers.* Subject to review by the Secretary, as provided elsewhere in this subpart, the presiding officer shall have power to:

- (1) Rule upon motions and requests;
- (2) Adjourn the hearing from time to time, and change the time and place of hearing;
- (3) Administer oaths and affirmations and take affidavits;

(4) Issue subpoenas, under the facsimile signature of the Secretary, requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers, and other documentary evidence;

(5) Examine witnesses and receive evidence;

(6) Take or order, under the facsimile signature of the Secretary, the taking of depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Consolidate hearings upon two or more petitions pertaining to the same order;

(10) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(d) *Who may act in absence of presiding officer.* In case of the absence of the presiding officer or his inability to act, the powers and duties to be performed by him under these rules of practice in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other presiding officer.

(e) *Disqualification of presiding officer.* The presiding officer may at any time withdraw as presiding officer in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.56 *Consolidated hearings.* At the discretion of the presiding officer, hearings upon two or more petitions pertaining to the same order may be consolidated, and the evidence taken at such consolidated hearing may be embodied in a single record.

§ 900.57 *Intervention.* Intervention in proceedings subject to this subpart shall not be allowed, except that, in the discretion of the Secretary or the presiding officer, any person (other than the petitioner) showing a substantial interest in the outcome of a proceeding shall



be permitted to participate in the oral argument and to file a brief.

§ 900.58 *Prehearing conferences.* In any proceeding in which it appears that such procedure will expedite the proceeding, the presiding officer, at any time prior to the commencement of or during the course of the hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (c) the limitation of the number of expert or other witnesses; and (d) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the presiding officer shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the presiding officer may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The presiding officer shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the presiding officer shall submit a written summary for the record if any action is taken.

§ 900.59 *Motions and requests—(a) General.* All motions and requests shall be filed with the hearing clerk, except that those made during the course of an oral hearing may be filed with the presiding officer or may be stated orally and made a part of the transcript.

The presiding officer is authorized to rule upon all motions and requests filed or made prior to the transmittal by the hearing clerk to the Secretary of the record as provided in this subpart. The Secretary shall rule upon all motions and requests filed after that time.

(b) *Certification of motions.* The submission or certification of any motion, request, objection, or other question to the Secretary prior to the transmittal of the record to the Secretary, as provided in this subpart, shall be in the discretion of the presiding officer.

§ 900.60 *Oral hearings before presiding officer—(a) Time and place.* The

presiding officer shall set a time and place for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. If any change in the time or place of hearing becomes necessary, it shall be made by the presiding officer, who, in such event, shall file with the hearing clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

(b) *Appearances—(1) Representation.* In any proceeding under the act, the parties may appear in person or by counsel or other representative. The Department, if represented by counsel, shall be represented by an attorney assigned by the Solicitor of the Department, and such attorney shall present or supervise the presentation of the position of the Department.

(2) *Debarment of counsel or representative.* Whenever, while a proceeding is pending before him, the presiding officer finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the presiding officer may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided*, That the presiding officer may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

In case the presiding officer has issued an order precluding a person from further acting as counsel or representative in the proceeding, the presiding officer, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter, the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If the petitioner, after being duly notified, fails to



appear at the hearing, he shall be deemed to have authorized the Secretary, without further procedure, to dismiss the proceeding with or without prejudice, as the Secretary may determine. In the event that the petitioner appears at the hearing and no representative of the Department appears, the presiding officer shall proceed ex parte to hear the evidence of the petitioner: *Provided*, That failure on the part of such representative of the Department to appear at a hearing shall not be deemed to be a waiver of the Department's right to file suggested findings of fact, conclusions, and order; to be served with a copy of the presiding officer's report; and to file exceptions with and to submit argument before the Secretary with respect thereto.

(c) *Order of proceeding.* Except as may be determined otherwise by the presiding officer, the petitioner shall proceed first at the hearing.

(d) *Evidence.*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination.

Any witness may, in the discretion of the presiding officer, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

The presiding officer shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon, except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript.

Only objections made before the presiding officer may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness shall be admitted, in the manner hereinafter provided in and subject to the provisions of § 900.61.

(4) *Affidavits.* Except as is otherwise provided in this subpart, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used.

(5) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the presiding officer, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(6) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Except where the presiding officer finds that the furnishing of copies is impracticable, a copy of each exhibit, in addition to the original, shall be filed with the presiding officer for the use of each other party to the proceeding. The presiding officer shall advise the parties as to the exact number of copies which will be required to be filed and shall make and have noted on the record the proper distribution of the copies.

If the testimony of a witness refers to a statute, or to a report, document, or transcript, the presiding officer, after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the presiding officer.

(7) *Official notice.* Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical,

scientific, or commercial fact of established character: *Provided*, That the parties shall be given adequate notice, at the hearing or by reference in the presiding officer's report or the tentative order or otherwise, of matters so noticed, and (except where official notice is taken, for the first time in the proceeding, in the final order) shall be given adequate opportunity to show that such facts are erroneously noticed.

(8) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the presiding officer's ruling in excluding the evidence was erroneous. The presiding officer shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the presiding officer erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

(e) *Oral argument before presiding officer.* Oral argument before the presiding officer shall be allowed unless the presiding officer finds that the denial of such argument will not deprive the parties of an adequate opportunity for oral argument subsequently in the proceeding. Such argument may be limited by the presiding officer to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(f) *Transcript.* A copy of the transcript shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Such copy shall remain the property of the Department and may not be removed from said office.

If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter, and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.

§ 900.61 *Depositions*—(a) *Procedure in lieu of deposition.* Before any party may have testimony taken by deposition, said party shall, if practicable, submit to the other party an affidavit which shall set forth the facts to which the witness would testify, if the deposition should be taken. If, after examination of such affidavit, the other party agrees, or (within 10 days after submission of the affidavit) fails to object, that the affidavit may be used in lieu of the deposition, the presiding officer shall admit the affidavit in evidence and shall not order the deposition to be taken.

(b) *Application for taking deposition.* Upon the application of a party to the proceeding, the presiding officer may, at any time after the filing of the moving paper, order, under the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing and shall be filed with the hearing clerk and shall set forth: (1) the name and address of the proposed deponent; (2) the name and address of the person (referred to hereinafter in this section as the "officer"), qualified under the rules in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which shall be at least 15 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(c) *Presiding officer's order for taking deposition.* If, after the examination of the application, the presiding officer is of the opinion that the deposition should be taken, he shall order its taking. The order shall be filed with the hearing clerk and shall be served upon the parties and shall state: (1) the time and place of the examination (which shall not be less than 10 days after the filing of the order); (2) the name of the officer before whom the examination is to be made; (3) the name of the deponent. The officer and the time and place need not be the same as those suggested in the application.

(d) *Qualifications of officer.* The deposition shall be taken before the presiding officer, or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.



(e) *Procedure on examination.* The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral examination, parties may transmit written interrogatories to the officer prior to the examination and the officer shall propound such interrogatories to the deponent.

The applicant must arrange for the examination of the witness either by oral examination or by written interrogatories. If it is found by the presiding officer, upon the protest of a party to the proceeding, that such party has his residence and his place of business more than 100 miles from the place of the examination and that it would constitute an undue hardship upon such party to be represented at the examination, the applicant will be required to conduct the examination by means of interrogatories. When the examination is conducted by means of interrogatories, copies of the interrogatories shall be served upon the other parties to the proceeding at least five days prior to the date set for the examination, and the other parties shall be afforded an opportunity to file with the officer cross-interrogatories at any time prior to the time of the examination.

(f) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same by registered mail to the hearing clerk.

(g) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section may be used in a proceeding under the act if the presiding officer finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a distance greater than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has endeavored to procure the attendance of the witness by subpoena but

has been unable to do so; or (5) that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If a deposition has been taken, and the party upon whose application it was taken refuses to offer it in evidence, the other party may offer the deposition, or any part thereof, in evidence.

§ 900.62 *Subpenas*—(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpoena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the presiding officer, under the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpoena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the presiding officer upon his own motion, shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpenas.* Subpenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpoena addressed to the person to be served at his or its last known residence or principal place of business or residence. Proof of service may be made by the return of service on the subpoena by the United States Marshal or his deputy; or, if served by an individual other than a United States Marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpoena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided in this paragraph and by the signed return post-office receipt: *Provided*, That, if the subpoena is issued on behalf of the Department, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpoena with the

person subpoenaed; the original, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.

§ 900.63 *Fees and mileage.* Witnesses who are subpoenaed and who appear in such proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpoenaed on behalf of the Department, shall be proved before the person issuing the subpoena, and, as to witnesses subpoenaed on behalf of any other party, shall be presented to such party.

§ 900.64 *The presiding officer's report—*(a) *Filing the transcript of evidence.* As soon as practicable after the close of the hearing, the presiding officer shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. The presiding officer shall attach to the original transcript of testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true, correct, and complete transcript of the testimony given in the hearing, except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits received in evidence at the hearing, with such exceptions as he shall specify. A copy of such certificate shall be attached to each copy of the transcript of testimony. In accordance with such certificate the presiding officer shall note on the original transcript, and the hearing clerk shall note upon each copy of the transcript, each correction detailed in such certificate by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate places any words necessary to make the text conform to the correct meaning, as certified by the presiding officer.

Immediately following the filing of the transcript, the hearing clerk shall advise each party to the proceeding as to the date of such filing.

(b) *Proposed findings of fact, conclusions, and orders.* Within 10 days (unless the presiding officer shall have announced at the hearing a shorter or longer period of time) after the transcript has been filed with the hearing clerk, as provided in paragraph (a) of this section, each party may file with the hearing clerk proposed findings of fact, conclusions, and order, based solely upon the evidence of record, and briefs in support thereof.

(c) *Presiding officer's report.* The presiding officer, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions, and orders, and briefs in support thereof, shall prepare, upon the basis of the record, and shall file with the hearing clerk, his report, a copy of which (together with notification of the date fixed by the presiding officer for the filing of exceptions there-to) shall be served by the hearing clerk upon each of the parties.

(d) *Exceptions.* Within a period of time (to be fixed by the presiding officer but not to exceed 20 days) after the filing of the presiding officer's report, the parties may file exceptions to the report. Any party who desires to take exception to any matter set out in the report shall transmit his exceptions in writing to the hearing clerk, referring, where practicable, to the relevant pages of the transcript, and suggesting a corrected finding of fact, conclusion, or order. Within the same period of time, each party shall transmit to the hearing clerk a brief statement in writing concerning each of the objections taken to the action of the presiding officer, as set out in § 900.60, upon which the party wishes to rely, referring, where practicable, to the pertinent pages of the transcript. A party, if he files exceptions or a statement of objections, shall state in writing whether he desires to make an oral argument thereon before the Secretary; otherwise, it shall be considered that he does not desire to make such oral argument.

(e) *Revision of presiding officer's report.* If exceptions are filed to the presiding officer's report, as provided in paragraph (d) of this section, the presiding officer, after consideration of such exceptions, shall make and file with the hearing clerk a draft of the findings of fact, conclusions, and final order of the



Secretary, which shall include such revision of his report as he deems to be appropriate in view of such exceptions.

§ 900.65 *Transmittal of record.* The hearing clerk, immediately following the filing of the revision of the presiding officer's report, or upon notification by the presiding officer that no revision will be made, shall transmit to the Secretary the record of the proceeding. Such record shall include: the petition; motions and requests filed with the hearing clerk, and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the hearing; the presiding officer's report; such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding; and the presiding officer's draft of the findings of fact, conclusions, and final order of the Secretary.

§ 900.66 *Argument before Secretary—*  
(a) *Oral argument.* Unless a party has included in his exceptions a request for oral argument or has filed a separate request for oral argument prior to the expiration of the last date for filing such exceptions, it shall be considered that he does not desire to make such oral argument. The granting of a request to make oral argument shall rest in the discretion of the Secretary.

(b) *Briefs.* The parties may, in the discretion of the Secretary, file written briefs either in addition to oral argument or in lieu thereof.

(c) *Scope of argument.* Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or in a written brief, shall be limited to the issues raised by the exceptions and statement of objections, or to such issues as the Secretary may indicate. If the Secretary determines that additional issues should be argued, counsel for the parties shall be given reasonable notice of such determination, so as to permit the preparation of adequate argument on all the issues to be argued.

§ 900.67 *Consideration and issuance of order—*(a) *Consideration of order.* As soon as practicable after the receipt of the record from the hearing clerk, or, in case argument was had, as soon as

practicable thereafter, the Secretary, upon the basis of the record, shall begin his consideration of the final order to be issued in the proceeding. If an oral argument was held, the order shall be considered by and shall be issued over the signature of the official who heard such oral argument, unless the parties shall consent to a different arrangement. At no stage of the proceeding between its institution and the issuance of the order shall the Secretary discuss *ex parte* the merits of the proceeding with any person who is connected with the proceeding in an advocative or an investigative capacity, or with any representative of such person: *Provided, however,* That the Secretary may discuss the merits of the proceeding with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. If, notwithstanding the foregoing provisions of this section, a memorandum or other communication from any party, or from any person acting on behalf of any party, which relates to the merits of the proceeding, receives the personal attention of the Secretary (or, if an official other than the Secretary is to issue the order, then of such other official) during the pendency of the proceeding, such memorandum or communication shall be regarded as argument made in the proceeding and shall be filed with the hearing clerk, who shall serve a copy thereof upon the opposite party to the proceeding, and opportunity shall be given the opposite party to file a reply thereto.

(b) *Issuance of order.* The order shall be issued and served upon the parties as the final order in the proceeding without further procedure: *Provided,* That, if the terms of the order differ substantially from those proposed in the report of the presiding officer, the Secretary shall, if he deems it advisable to do so, direct that a copy of the order be served upon the parties as a tentative order; and, in such event, opportunity shall be given the parties to file exceptions thereto and written arguments or briefs in support of such exceptions. In such case, if exceptions are filed within a period of time (to be fixed by the Secretary but not to exceed 20 days) following the service of the tentative order, the Secretary shall give consideration to and shall make such changes in the tentative order as he deems to be appropriate; otherwise, the tentative order shall become final, as of the day following



the date of expiration of the period fixed for the filing of exceptions.

§ 900.68 *Applications for reopening hearings; for rehearings or rearguments of proceedings; or for reconsideration of orders*—(a) *Petition requisite*—(1) *Filing; service*. An application for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding, or for reconsideration of the order shall be made by petition addressed to the Secretary and filed with the hearing clerk, who immediately shall notify and serve a copy thereof upon the other party to the proceeding. Every such petition shall state specifically the grounds relied upon.

(2) *Petitions to reopen hearings*. A petition to reopen the hearing for the purpose of taking additional evidence may be filed at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

(3) *Petitions to rehear or reargue proceedings, or to reconsider orders*. A petition to rehear or reargue the proceeding or to reconsider the final order shall be filed within 15 days after the date of the service of such order. Every such petition shall state specifically the matters claimed to have been erroneously decided, and alleged errors must be briefly stated.

(b) *Procedure for disposition of petitions*. Within 10 days following the service of any petition provided for in this section, the other party to the proceeding shall file with the hearing clerk an answer thereto. As soon as practicable thereafter, the Secretary shall announce the decision granting or denying the petition. Unless the Secretary shall determine otherwise, the issuance or operation of the order shall not be stayed pending the decision of the Secretary upon the petition. In the event that any such petition is granted by the Secretary, the applicable rules of practice, as set out elsewhere in this subpart, shall be followed.

§ 900.69 *Filing; service; extensions of time; effective date of filing; and computation of time*—(a) *Filing; number of copies*. Except as provided otherwise herein, all documents or papers required

or authorized in this subpart to be filed with the hearing clerk shall be filed in quadruplicate: *Provided*, That, if there are more than two parties to the proceeding, a sufficient number of additional copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper, required or authorized in this subpart to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the presiding officer.

(b) *Service; proof of service*. Copies of all such papers shall be served upon the parties by the hearing clerk, by the presiding officer, or by some other employee of the Department or by a United States Marshal or his deputy. Service shall be made either (1) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; or (2) by leaving a copy of the document or paper at the principal office or place of business of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (3) by registering and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office, place of business, or residence. Proof of service hereunder shall be made by the affidavit of the person who actually made the service. The affidavit contemplated herein shall be filed with the hearing clerk, and the fact of filing thereof shall be noted on the docket of the proceeding.

(c) *Extensions of time*. The time for the filing of any documents or papers required or authorized in this subpart to be filed may be extended upon (1) a written stipulation between the parties, or (2) upon the request of a party, by the presiding officer before the transmittal of the record to the Secretary, or by the Secretary at any other time if, in the judgment of the Secretary or the presiding officer, as the case may be, there is good reason for the extension.

(d) *Effective date of filing*. Any document or paper, except a petition

filed pursuant to § 900.52, required or authorized under these rules to be filed shall be deemed to have been filed when it is postmarked, or when it is received by the hearing clerk. Any petition filed under § 900.52 shall be deemed to be filed when it is received by the hearing clerk.

(e) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Sunday or legal holiday, such time shall be extended to include the next following business day.

§ 900.70 *Applications for interim relief—(a) Filing the application.* A person who has filed a petition pursuant to § 900.52 may by separate application filed with the hearing clerk apply to the Secretary or an order postponing the effective date of, or suspending the application of, the marketing order or any provision thereof, or any obligation imposed in connection therewith, pending final determination of the proceeding.

(b) *Contents of the application.* The application shall contain a statement of the facts upon which the relief is requested, including any facts showing irreparable injury. The application must be signed and sworn to by the petitioner and any facts alleged therein which are not within his personal knowledge shall be supported by affidavits of a person or persons having personal knowledge of such facts or by proper documentary evidence thereof.

(c) *Answer to application.* Immediately upon receipt of the application, the hearing clerk shall transmit a copy thereof, together with all supporting papers, to the Deputy Administrator, who shall, within 20 days, or such other time fixed by the Secretary, after the filing of the application file an answer thereto with the hearing clerk.

(d) *Contents of answer.* The answer shall contain a statement of the objections, if any, of the Deputy Administrator to the application for interim relief, and may be supported by affidavits and documentary evidence.

(e) *Transmittal to Secretary.* Upon receiving the answer of the Deputy Administrator or upon the expiration of the time for filing the answer, the hearing clerk shall transmit to the Secretary for his decision all papers filed in connection with the application.

(f) *Hearing and oral argument.* The Secretary may, in his discretion, permit oral argument or the taking of testimony in connection with such application. However, unless written request therefor is filed with the hearing clerk prior to the transmittal of the papers to the Secretary, the parties shall be deemed to have waived oral argument and the taking of testimony.

(g) *Decision by Secretary.* The Secretary may grant or deny the application. Any action taken by the Secretary shall be in the form of an order filed with the hearing clerk and shall contain a brief statement of the reasons for the action taken. The hearing clerk shall cause copies of the order to be served upon the parties.

§ 900.71 *Hearing before Secretary.* The Secretary may act in the place and stead of a presiding officer in any proceeding hereunder. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final order in the proceeding: *Provided*, That he may issue a tentative order in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final order.

#### SUBPART—PROCEDURE GOVERNING MEETINGS TO ARBITRATE AND MEDIATE DISPUTES RELATING TO SALES OF MILK OR ITS PRODUCTS

AUTHORITY: §§ 900.100 to 900.118 issued under sec. 3, 50 Stat. 248; 7 U. S. C. 671.

SOURCE: §§ 900.100 to 900.118 appear at 13 F. R. 8595, Dec. 29, 1948; 19 F. R. 57, Jan. 6, 1954.

§ 900.100 *Words in the singular form.* Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.101 *Definitions.* As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "act" means section 3 of the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 248, as amended; 7 U. S. C. 671);

(b) The term "Department" means the United States Department of Agriculture;



(c) The term "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore lawfully delegated, or to whom the Secretary may hereafter lawfully delegate, the authority to act in his stead;

(d) The term "Solicitor" means the Solicitor of the Department;

(e) The term "Deputy Administrator" means any Deputy Administrator of the Agricultural Marketing Service of the Department or any officer or employee of the Department to whom such Deputy Administrator has heretofore lawfully delegated, or to whom he may hereafter lawfully delegate, the authority to act in his stead.

(f) The term "Service" means the Agricultural Marketing Service of the Department.

(g) The term "Division" means the Dairy Division of the Service;

(h) The term "cooperative" means any association, incorporated or otherwise, which is in good faith owned or controlled by producers, or organizations thereof, of milk or its products, and which is bona fide engaged in the collective processing or preparing for market or handling or marketing, in the current of interstate or foreign commerce, of milk or its products;

(i) The term "arbitrator" means any officer or employee of the Service designated by the Deputy Administrator, pursuant to the act, to arbitrate a bona fide dispute with reference to the terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(j) The term "mediator" means any officer or employee of the Service designated by the Deputy Administrator, pursuant to the act, to mediate a bona fide dispute with reference to terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(k) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D. C.

§ 900.102 *Filing of applications for mediation or arbitration.* All applications for mediation or arbitration, all submissions, and all correspondence re-

garding mediation or arbitration shall be addressed to the Secretary, attention of the Division.

§ 900.103 *Application for mediation.* An application for mediation by a cooperative shall be in writing and shall include the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) Description of the cooperative organization and business, including copies of the articles of incorporation or association, by-laws, and membership contract; information regarding the number of shares of outstanding stock and the approximate portion owned by active producers; a statement of the function performed in connection with the collective processing, preparing, handling, or marketing of milk or its products; and data relative to the distribution of membership by States, the distribution by States of plant facilities for collecting, processing, or disposing of milk or its products, and the business operations for the year last past, including the total quantity of milk and its products handled by the applicant and the proportion of that quantity that was sold in States other than the States of production;

(c) Suggested time and place for meeting between parties and mediator.

§ 900.104 *Inquiry by the Deputy Administrator.* Upon receipt of an application for mediation, the Deputy Administrator, through such officers or employees of the Service as he may designate, may make any inquiry which is deemed to be necessary or proper in order to determine whether a bona fide dispute exists.

§ 900.105 *Notification.* The Deputy Administrator, acting on behalf of the Secretary will notify the applicant as to whether he considers that mediation will effectuate the purpose of the act and as to whether he will mediate.

§ 900.106 *Assignment of mediator.* The Director of the Division shall assign a mediator, from the group designated by the Deputy Administrator, to act in such capacity.

§ 900.107 *Meetings.* All meetings held pursuant to §§ 900.103 to 900.109 shall be held with and under the direction of the mediator.

§ 900.108 *Mediator's report.* The mediator, upon the completion of mediation proceedings, shall submit to the Deputy Administrator a complete report on such proceedings.

§ 900.109 *Mediation agreement.* An agreement arrived at by mediation shall not become effective until approved by the Secretary, and the Secretary will not approve an agreement if there is evidence of fraud, if there is a lack of evidence to support the agreement, or if the agreement provides for any unfair trade practice.

§ 900.110 *Application for arbitration.* An application for arbitration by a cooperative shall be in writing and shall contain the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) The same information required under § 900.103 (b);

(c) Concise statement of dispute to be submitted;

(d) Originals or certified copies of all contracts, if any, involved in the dispute, and of correspondence which has passed between the parties and of any other documents or information relied upon;

(e) Dates before which it is desired that the hearing shall be had and the award shall become effective;

(f) Suggested time and place for arbitration hearing.

The applicant shall send a copy of the application to each other party to the dispute.

§ 900.111 *Inquiry by the Deputy Administrator.* Upon receipt of an application for arbitration, the Deputy Administrator, through such officers or employees of the Service as he may designate, may make any inquiry deemed to be necessary or proper in order to determine whether a bona fide dispute exists, to assist the parties in reducing the dispute to well-defined issues, and to select an arbitrator who would be satisfactory to all parties.

§ 900.112 *Notification.* The Deputy Administrator, acting on behalf of the Secretary, within a reasonable time after the receipt of an application, will notify the applicant as to whether he will grant the application.

§ 900.113 *Submission.* Within a reasonable time after the receipt of the

Deputy Administrator's consent to arbitrate, the parties to the dispute shall file with the Deputy Administrator a formal submission, which shall contain the following information:

(a) Names in full of the parties;

(b) Addresses of the parties to whom all notifications and communications concerning the arbitration shall be sent;

(c) Description of the organization and businesses of all parties to the dispute, including sufficient information to show that the cooperative is a bona fide one, and that the parties are engaged in activities in the current of interstate or foreign commerce;

(d) Concise statement of the specific questions submitted and a brief outline of the contentions of each party to the dispute, and a statement as to the period of time during which the award shall be in effect, said period to be not less than thirty days from the effective date of the award;

(e) Name of arbitrator;

(f) Time and place of arbitration, including street address;

(g) Stipulation by the parties that they will produce any books, records, and correspondence required by the arbitrator as being necessary to a fair determination of the dispute;

(h) Agreement by the parties that they will consider the award as final and will comply therewith;

(i) Stipulation by the parties that arbitration is to take place under rules and regulations issued by the Secretary, and that any such rules and regulations pertaining to mediation and arbitration shall be considered a part of the submission;

(j) Stipulation that a stenographic report of the proceedings must be made.

The submission shall be signed by each party before a notary public, and when the signature is that of an agent of a corporation or cooperative association, the same shall be accompanied by evidence of the authority to sign.

A submission may be withdrawn at any time before the award, and any question held by the arbitrator to be a separable question may be withdrawn before award by agreement of all parties. When any question is so withdrawn, the parties shall file with the arbitrator the agreement on that question reached by the parties, showing all the details thereof,



and the arbitrator shall include it in the record of the arbitration.

§ 900.114 *Designation of arbitrator.* The Deputy Administrator, after receiving the submission, will designate one or more persons to act as arbitrator.

§ 900.115 *Hearing.* The arbitrator shall have full discretion to conduct the hearing in such manner as will, in his opinion, enable him to ascertain all the facts in the case.

Parties to the dispute may appear in person or by duly accredited agents and may be represented by counsel.

All relevant and material evidence may be presented. The arbitrator shall not be bound by the legal rules of evidence.

The arbitrator, in the presence of the parties, may require the production of books and records for examination by himself, but not for examination of confidential information by other parties to the dispute unless the party producing the same consents to its examination by the other parties to the dispute.

No evidence offered by one party shall be received except in the presence of all parties unless the parties so agree in a submission specifying the nature of the evidence to be received.

Final determination as to what will be considered confidential information shall be made by the arbitrator.

The arbitrator may request the opinions of economists, marketing specialists, statisticians, lawyers, accountants, and other experts.

When more than two arbitrators are designated to hear a dispute, and they disagree, the award of the majority shall be the final award. If the arbitrators are evenly divided, there shall be no award.

A stenographic record of all the proceedings during an arbitration must be made.

§ 900.116 *Award.* An award shall be made within ten days after the close of the hearing.

The award shall be in writing and shall cover only points of dispute raised in the submission.

The arbitrator, in making the award, may use his own technical knowledge in addition to the evidence submitted by the parties.

The award shall state the period during which it shall be in effect, said period to be not less than thirty days from the effective date thereof; and said period may be extended by agreement among

the parties upon notification thereof to the Deputy Administrator, unless or until the Deputy Administrator withdraws his approval.

The arbitrator shall sign the award in the presence of a notary public, or, when more than one arbitrator is designated, the arbitrator shall sign in the presence of each other.

Copies of the award shall be delivered to the parties by the Division.

§ 900.117 *Approval of award.* The award shall not become effective until approved by the Secretary, and the Secretary will not approve an award if there is evidence of fraud, or evidence of misconduct upon the part of the arbitrator, or lack of evidence to support the award, or if the award provides for any unfair trade practice.

§ 900.118 *Costs.* The parties jointly shall pay for the stenographic record. A copy of the record shall be furnished by the parties to the arbitrator and shall be forwarded by him to the Deputy Administrator, ultimately to be filed in the office of the hearing clerk.

The arbitrator shall not receive compensation from parties to the dispute.

#### SUBPART—MISCELLANEOUS REGULATIONS

**AUTHORITY:** §§ 900.200 to 900.211 issued under sec. 10, 48 Stat. 37, as amended; 7 U. S. C. 610.

**SOURCE:** §§ 900.200 to 900.211 appear at 13 F. R. 8596, Dec. 29, 1948; 19 F. R. 57, Jan. 6, 1954, except as otherwise noted.

§ 900.200 *Definitions.* As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement act of 1937 (50 Stat. 246, 7 U. S. C. 601), as amended;

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore lawfully delegated, or to whom the Secretary may hereafter lawfully delegate, the authority to act in his stead;

(d) The term "Solicitor" means the Solicitor of the Department;



(e) The term "Deputy Administrator" means any Deputy Administrator of the Agricultural Marketing Service of the Department or any officer or employee of the Department to whom such Deputy Administrator has heretofore lawfully delegated, or to whom he may hereafter lawfully delegate, the authority to act in his stead;

(f) The term "Service" means the Agricultural Marketing Service of the Department;

(g) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(h) The term "marketing agreement" means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the act;

(i) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the act;

(j) The term "person" means any individual, corporation, partnership, association, or any other business unit;

(k) The term "official" means the Secretary, any officer, employee, or other person employed or appointed by the Department, and any agency or agent appointed by the Secretary to administer a marketing agreement or a marketing order, and any agent or employee of any such agency or agent;

(l) The term "information" means and includes reports, books, accounts, records, and the facts and information contained therein and required to be furnished to or acquired by any official pursuant to the provisions of any marketing agreement or marketing order.

§ 900.201 *Investigation and disposition of alleged violations.* Whenever the Deputy Administrator has reason to believe that any handler has violated, or is violating, the provisions of any marketing order, he may institute such investigation and, after due notice to such handler, conduct such hearing in order to determine the facts as, in his opinion, are warranted. If, in the opinion of the Deputy Administrator and the Solicitor, the facts developed as a result of such investigation or hearing warrant such action, the Solicitor shall refer the matter to the Attorney General for appropriate action.

§ 900.210 *Disclosures of information.* All information in the possession of any official which relates to the business or property of any person, and which was furnished by, or obtained from, such person pursuant to the provisions of any marketing agreement or marketing order, shall be kept confidential and shall not be disclosed, divulged, or made public, unless otherwise expressly provided in said marketing agreement or marketing order, or unless said person authorizes said official, in writing, to disclose such information, except that:

(a) Such information may be disclosed, divulged, or made public if it has been obtained from or furnished by a person who is not the person to whose business or property such information relates or an employee of such latter person, or if such information is otherwise required by law to be furnished to an official;

(b) Such information may be furnished to other officials for use in the regular course of their official duties;

(c) Such information may be combined and published in the form of general statistical studies or data in which the identity of the person furnishing such information or from whom it was obtained shall not be disclosed;

(d) Such information may be disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or, if the Secretary determines that such disclosure is not contrary to the public interest, such information may be disclosed in response to a subpoena by any court of competent jurisdiction.

(e) Such information may be offered in evidence (whether or not it has been obtained from or furnished by the person against whom it is offered) by or on behalf of the Secretary, the United States, or the official who obtained it or to whom it was furnished, in any administrative hearing held pursuant to section 8c (15) (A) of the act or in any action, suit, or proceeding, civil or criminal, in which the Secretary or the United States or any such official is a party, and (1) which is instituted (i) for the purpose of enforcing or restraining the violation of any marketing agreement or marketing order, or (ii) for the purpose of collecting any penalty or forfeiture provided for in the act, or (iii) for the purpose of collecting any monies due under a marketing agree-

ment or marketing order, or (2) in which the validity of any marketing agreement or marketing order, or any provision of either, is challenged or involved.

(f) Such information may be furnished to the duly constituted authorities of any State, pursuant to a written agreement made under authority of section 10 (i) of the act, to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities.

[13 F. R. 8596, Dec. 29, 1948, as amended at 17 F. R. 11429, Dec. 18, 1952]

§ 900.211 *Penalties.* Any official who shall have violated the provisions of § 900.210 by wilfully divulging, disclosing, or making public any information acquired by or furnished to or in the possession or custody of such official pursuant to the provisions of a marketing agreement or marketing order shall be subject to a penalty of \$100 for each offense. (The civil penalty provided in this section is prescribed under the authority contained in sec. 10 (c) of the act (7 U. S. C. 610 (c)); this provision is not intended to supersede the provision in sec. 8d (2) of the act (7 U. S. C. 608d (2)) for criminal liability and removal from office.

